

The Honorable John H. Chun

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*,

Defendants.

Case No. 2:23-cv-0932

**STIPULATED MOTION TO SEAL
MATERIAL CITED IN EXHIBIT A
TO FTC’S MOTION FOR EXCESS
FACT-WITNESS DEPOSITIONS**

NOTE ON MOTION CALENDAR:
August 28, 2024

Pursuant to Local Civil Rule 5(g), Plaintiff Federal Trade Commission (“Plaintiff” or “FTC”) and Defendant Amazon.com, Inc. (“Defendant” or “Amazon”) respectfully jointly move the Court to seal certain documents, or excerpts thereof, cited in the Declaration of Olivia Jerjian (“Jerjian Declaration”), which is Exhibit A to Plaintiff’s Motion for Excess Fact-Witness Depositions (“Deposition Motion”). In support of this Stipulated Motion, Plaintiff and Defendant state as follows.

1. On August 28, 2024, the FTC filed its Deposition Motion. Dkt. #183.

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1 2. On the same day, the FTC filed under seal an unredacted version of the Jerjian
2 Declaration. Dkt. #185. The FTC has also filed a redacted, public version of the Jerjian
3 Declaration. Dkt. #186.

4 3. The FTC and Amazon jointly move to seal material cited in the Jerjian
5 Declaration (the “Sealed Material”), which is identified in the chart below and attached to the
6 Jerjian Declaration. The proposed sealed portion is highlighted in blue in the exhibit attached to
7 the unredacted Jerjian Declaration filed under seal.

8 4. The Court’s Protective Order (ECF No. 124 ¶ 5.4) and Local Rule 5(g)(3)(B)
9 require that the Party seeking to file information under seal provide (1) a statement of the
10 applicable legal standard, (2) the legitimate private or public interests that warrant the relief
11 sought, (3) the injury that will result if the relief sought is not granted, and (4) why a less
12 restrictive alternative to the relief sought is not sufficient. Amazon submits paragraphs 5-8 in
13 accordance with these requirements.

14 5. A party seeking to seal documents attached to a non-dispositive motion need only
15 show “good cause” to keep the documents from public view because “the public has less of a
16 need for access to court records attached only to non-dispositive motions.” *Kamakana v. City &*
17 *Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006); *Center for Auto Safety v. Chrysler*
18 *Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (“good cause” standard applies to non-
19 dispositive motion unrelated to the merits of the case). The Deposition Motion is a non-
20 dispositive motion. To show good cause, the moving party must articulate a specific harm that
21 would occur if the subject information was made public. *See Phillips v. General Motors Corp.*,
22 307 F.3d 1206, 1213 (9th Cir. 2002). Furthermore, even under the heightened “compelling
23

reasons” standard used for sealing information attached to dispositive motions, courts have long recognized that “business information that might harm a litigant’s competitive standing” should be sealed. *See, e.g., Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

6. Amazon’s legitimate business interests warrant the relief sought. Amazon seeks to seal only limited confidential business information, such as internal metrics and proprietary internal analyses, similar to those described in Amazon’s declaration in support of its earlier motion to seal. *See* ECF No. 42. This Court granted a motion to seal similar information under a heightened “compelling reasons” standard in this case. *See* ECF No. 79. This Court also granted a motion to seal similar information under the “good cause” standard applicable to discovery motions. *See* ECF No. 164. The limited information that Amazon seeks to seal thus easily satisfies the applicable “good cause” standard. For the Sealed Material, Amazon further takes the following positions:

Document	Proposed Seal	Amazon’s Position
AMZN_00156573 (Attachment 3 to Jerjian Declaration)	Redactions, at page 2 (AMZN_00156574)	Proposed redactions are necessary to protect highly sensitive commercial information.

7. As explained in Amazon’s original motion to seal similar information, which the Court granted, the public release of this information would harm Amazon’s competitive position. *See* ECF No. 41. The risk of Amazon’s competitors using this commercially sensitive information to their own advantage significantly outweighs any limited public interest in public disclosure of these few discrete pieces of information. *See, e.g., McCrary v. Elations Co. LLC*, 2014 WL 12589137, at *6 (C.D. Cal. Dec. 2, 2014) (sealing internal clinical studies and

1 consumer surveys because “disclosure of these documents could benefit Defendant’s competitors
2 and reduce any business advantage that Defendant currently possesses”).

3 8. There is no less restrictive alternative to sealing the discrete pieces of information
4 that Amazon has identified. Amazon has applied only limited redactions. This approach is
5 aligned with the previous redactions and sealed filings that Amazon sought and this Court
6 granted. *See* ECF Nos. 41, 79, 164.

7 9. The FTC stipulates to filing under seal the documents or portions of documents
8 identified above. It takes no position as to Amazon’s assertions in paragraphs 5-8 above.

9 **LOCAL RULES 5(g)(3)(A), 7(e) CERTIFICATION**

10 Pursuant to Local Rule 5(g)(3)(A), undersigned counsel certify that they met and
11 conferred by phone on August 26, 2024 to reach the agreement described in this stipulated
12 motion.

13 Undersigned counsel also certify that this memorandum contains 737 words, in
14 compliance with the Local Civil Rules.

15 Dated: August 28, 2024

/s/ Evan Mendelson

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